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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII**

**LEGAL ENFORCEMENT PROGRAM  
999 18th STREET - SUITE 300  
DENVER, COLORADO 80202-2466  
<http://www.epa.gov/region08>**

**FACSIMILE COVER**

DATE: February 13, 2004

TO: Ramon M. Escure, Esq.

AGENCY/CO: Law Office of Ramon M. Escure, P.C.

CITY: Telluride

STATE: CO

FAX NUMBER: (970) 728-5194

TEL #: (970) 728-6116

NUMBER OF PAGES (Including Cover Sheet): 4

FROM: Sheldon H. Muller

SENDER'S TELEPHONE NUMBER: (303) 312-6916

SENDER'S FAX NUMBER: (303) 312-6953

COMMENTS:



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☒ HARD COPY TO FOLLOW  
☐ HARD COPY WILL NOT BE SENT

SENDER: \_\_\_\_\_  
DATE/TIME: \_\_\_\_\_

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February 13, 2004

**VIA FACSIMILE AND**  
**CERTIFIED MAIL,**  
**RETURN RECEIPT REQUESTED**

8ENF-L

Ramon M. Escure, Esq.  
Law Office of Ramon M. Escure, P.C.  
222 West Colorado Ave.  
Telluride, CO 81435

Re: Access to Documents

Dear Ramon:

Over the past 1½ years, we have discussed, on several occasions, the need for your client, Rico Properties LLC and its affiliates to maintain the historic mining records stored at your client's offices at 11 South Glasgow Avenue, Rico, Colorado and to retain the records at that location. During our discussions, I made clear that the United States Environmental Protection Agency ("EPA") would likely want to review those documents from time to time and you unambiguously expressed your understanding of EPA's need. In fact, on August 6, 2002, you wrote to me and stated as follows: "During the recent deposition of Stanley A. Foster, you inquired as to the status of the historic mining records in my client's possession. You requested that my client confirm in writing that the mining records would remain in storage and safe keeping for at least (2) more years. Mr. Foster authorized me to confirm in writing that the mining records currently stored at 11 South Glasgow Avenue, Rico, Colorado, would remain on site and in storage for at least two (2) more years. If my client relocates its offices, arrangements will be made for the continued storage of the records. **My client will not release or move the records without first giving your office written notice.**" (Emphasis added.)

On or about January 12, 2004, I advised you that EPA wanted to send an EPA contractor, SAIC, to your client's office at 11 South Glasgow Avenue, Rico, Colorado, during the week of January 26, 2004 to review and copy the records stored at that location. You assured me that would be fine. You also advised me that representatives of the Atlantic Richfield Company



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("ARCO") would be at your client's office during the week of January 19, 2004 to review and copy records. You did not indicate to me at that time or at any other time that any of the documents would be removed by ARCO, other than for copying. To ensure that ARCO's inspection and copying efforts would not interfere with those of EPA and that EPA's efforts would not interfere with those of ARCO, after you and I spoke about EPA's plans I called William Duffy, counsel for ARCO. Mr. Duffy assured me that his representatives would complete their review prior to January 26, 2004 and that he would call me if it appeared that any documents removed for copying would not be returned prior to SAIC's planned review. Since I did not hear from Mr. Duffy or you indicating that not all of the documents would be at 11 South Glasgow Avenue during SAIC's review, I assumed that all documents had been returned.

On February 10, 2004, I called you to discuss another matter. During the course of the conversation, you advised me that you believed that ARCO had removed some of the documents that had been located at 11 South Glasgow Avenue and that they may be in the possession of Mr. Duffy. I asked you to confirm this information and you suggested that we discuss the matter with Mr. Duffy at the public meeting that was scheduled to take place in Rico on the evening of February 12, 2004, which all three of us planned to attend. At the close of the February 12 meeting, Mr. Duffy, responding to my inquiry on this issue, informed me that the individuals that he sent to 11 South Glasgow Avenue to review your client's documents had indeed removed numerous documents to Mr. Duffy's office. Mr. Duffy further advised me that ARCO was asserting that the removed documents were privileged and no longer available for review and copying by EPA. I advised Mr. Duffy that I could not see how the documents could be privileged since they had been in your client's possession for over 15 years and I and other EPA employees had already had full access to all of the documents. I further requested that Mr. Duffy make the documents available to EPA immediately. Mr. Duffy refused to release the documents.

On February 12, 2004, Mr. Duffy FAXed a letter to me enclosing a handwritten list of approximately 41 documents that were removed by Mr. Duffy's representatives from your client's office sometime between January 21, 2004 and January 23, 2004. In the letter, Mr. Duffy stated as follows: "Atlantic Richfield is reviewing the documents and within the next week will share copies of the documents with EPA, returning the originals to the archive, or advise the agency of any privilege claims it may assert."

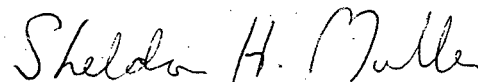
Pursuant to our prior agreement and your prior assurances, please reclaim the documents removed by ARCO and provide EPA with copies of those documents immediately. Additionally, please provide assurances that: (1) all the documents that have been in storage at 11 South Glasgow Avenue, Rico, Colorado, will continue to remain on site and in storage for at least two (2) more years; (2) if your client relocates its offices, arrangements will be made for the



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continued storage of the records; and (3) your client will not release or move the records without first giving EPA written notice. If you do not intend to comply with these requests, please advise me at once.

Sincerely,

A handwritten signature in cursive script that reads "Sheldon H. Muller".

Sheldon H. Muller  
Enforcement Attorney

cc: William J. Duffy, Esq.

